

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID A. HINKLE and DEPARTMENT OF VETERANS AFFAIRS,
JERRY L. PETTIS MEMORIAL MEDICAL CENTER, Loma Linda, CA

*Docket No. 01-54; Submitted on the Record;
Issued November 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained more than a seven percent permanent impairment to his right lower extremity.

On July 9, 1993 appellant, then a 44-year-old material handler, filed a notice of traumatic injury alleging that he strained his right knee as a result of his federal employment. Appellant underwent a right knee arthroscopy with partial medial meniscectomy on August 19, 1993. On August 24, 1993 the Office of Workers' Compensation Programs accepted appellant's claim for a strained right knee. On September 7, 1997 appellant filed a claim for a schedule award (Form CA-7). Based on the recommendation of the Office medical adviser, the Office awarded appellant compensation on March 30, 1998 for a seven percent impairment to his right knee.

After this, appellant underwent further surgeries for his right knee on August 19, 1993, January 29, 1998 and January 4, 1999.

On April 19, 1999 appellant requested an additional schedule award for permanent partial impairment to his right knee.

In a medical report dated October 5, 1999, Dr. Thomas R. Dorsey, Board-certified orthopedic surgeon, reviewed appellant's medical record and conducted a physical examination of appellant's right knee pain. Dr. Dorsey noted:

"The examination today shows antalgia upon gait. There is limited range of motion in flexion. There is atrophy of the knee. There is tenderness laterally at the knee.

"The radiographs taken today show narrowing of the medial joint space. The records reviewed show that a [magnetic resonance imaging] of the right knee performed on October 6, 1998 showed foreshortening of the medial meniscus. There was narrowing of the medial joint space with irregularity of the articular

cartilage of the medial femoral condyle. There was thinning of the articular cartilage over the medial facet of the patella.”

Dr. Dorsey diagnosed: (1) status post multiple arthroscopic procedures for meniscal tear, right knee; (2) early degenerative joint disease, medial compartment, right knee; and (3) early chondromalacia, medial facet at the patella. Dr. Dorsey stated that the “intensity of the patient’s knee pain is moderate.” He noted that appellant had 110 degrees of flexion in his right knee as opposed to 150 degrees in his left. He noted no problems with extension and no ankylosis. He found weakness present in the right knee. He specifically stated: “The patient does have irregularity of the articular cartilage of the medial femoral condyle. This does not affect the bone. There is also thinning of the articular cartilage of the medial facet of the patella.” Dr. Dorsey noted that appellant did not wear a brace, and that the loss of shock absorption would be 50 percent.

The Office medical adviser reviewed appellant’s record and applied three different methodologies for determining appellant’s level of permanent impairment. He explained the methodologies as follows:

“The reviewer would recommend grading [appellant’s] complaints a maximal [G]rade III, as per the Grading Scheme, found in [C]hapter 3, fourth edition of the *Guides*.^[1] This would be pain and/or altered sensation that may interfere with activity, or a 60 percent grade of a maximal 7 percent (femoral nerve), equivalent to a 4.2, or rounded off to 4 percent impairment for pain factors. Range of motion listed of 1/1 through 110/150, although limited, would be rated 0 as per Table 41, Chapter 3, same edition of the *Guides*. The records state there is no weakness, with girth measurements revealing 0.5 cm difference of the right thigh compared to the left. This would be rated 0 as per Table 37. Utilizing this method and the Combined Values Chart: the 4 percent impairment for pain factors, combined with the 0 for loss of motion, combined with the 0 for atrophy/weakness would be equivalent to a 4 percent impairment of the right lower extremity, or leg.

“A second method of calculating an award may be based on utilizing Table 64. In this particular case, a partial medial meniscectomy was performed, which would be equivalent to a 2 percent impairment.

“A third method of calculating an award may be based on Table 62. The report states that there was very slight narrowing of the medial joint space when compared to the lateral joint space. At most, there would be 1.0 mm of joint space narrowing as per this description, and this would be equivalent to a 7 percent lower extremity impairment.

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) [hereinafter A.M.A., *Guides*]. The tables referred to by the Office medical adviser may be found in the A.M.A., *Guides* as follows: Table 41 (page 78), Table 37 (page 77), Table 64 (page 85) and Table 62 (page 83).

“Of the three methods, the third arrives at the highest level, of a 7 percent impairment of the right lower extremity, or leg, which the same impairment previously calculated.”

By decision dated November 22, 1999, the Office denied appellant’s request for a greater award.

By letter dated November 30, 1999, appellant requested an oral hearing. At the March 21, 2000 hearing, appellant testified about his ongoing problems with pain and his subsequent surgeries. Appellant argued that, since additional cartilage had been removed from his knee, it only made sense that he had an additional impairment. The hearing representative explained to appellant that he needed an impairment rating from his treating physician.

Subsequent to the hearing, appellant submitted a letter dated April 21, 2000 noting that Dr. Dorsey concluded that appellant was not required to wear a knee brace when, in fact, he was. He also submitted copies of medical notes dated July 8 and 27, 1998 which directed that he wear the knee brace at work. He also noted that based on Dr. Dorsey’s report he had lost 25 degrees of flexion since 1996. Appellant did not provide a new impairment rating pursuant to the A.M.A., *Guides*.

By decision dated June 14, 2000, and finalized June 23, 2000, the Office hearing representative concluded that appellant had provided no medical evidence or opinion substantiating that appellant had greater than a seven percent permanent impairment to his right lower extremity.

The Board finds that appellant has no more than a seven percent impairment to his right lower extremity for which he received a schedule award.

The schedule award provision of the Federal Employees’ Compensation Act² provides for compensation to employees sustaining permanent impairment from loss or loss of use of specified members of the body. The Act’s compensation schedule specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act does not, however, specify the manner by which the percentage loss of a member, function, or organ shall be determined. The method used in making such a determination is a matter that rests in the sound discretion of the Office.³ For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.⁴

In this case, the Office medical adviser reviewed appellant’s file, and in particular, the October 5, 1999 medical report of Dr. Dorsey. Applying Dr. Dorsey’s findings to the A.M.A.,

² 5 U.S.C. §§ 8101-8193.

³ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

Guides, the Office medical adviser determined that appellant, at most, had a permanent impairment of the right lower extremity of seven percent.

Appellant has not provided any different impairment evaluation, despite being given the opportunity to do so, and the Board notes no factual error made by the Office medical adviser. As the Office medical examiner reasonably determined that appellant had no greater than a seven percent impairment to his right lower extremity, and appellant has provided no medical evidence which would indicate that he has a greater impairment under the A.M.A., *Guides*, the Board affirms the decision of the hearing representative that appellant is not entitled to a greater award.

The decisions of the Office of Workers' Compensation Programs dated June 23, 2000 and November 22, 1999 are affirmed.

Dated, Washington, DC
November 5, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member